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No. 90-1555

# In the Supreme Court of the United States

OCTOBER TERM, 1990

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MARGARET DANEHY MAYNARD, PETITIONER

*v.*

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA, ET AL.

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

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## BRIEF FOR THE FEDERAL RESPONDENTS (EXCEPT JUDGE A. WALLACE TASHIMA) IN OPPOSITION

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## QUESTION PRESENTED

Whether Local Rule 2.2.1 of the United States District Court for the Central District of California, which requires attorneys seeking admission to practice before that court to be members in good standing of the California state bar, is constitutional as applied to petitioner.

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 4-6) is unreported, but the decision is noted at 915 F.2d 1581 (Table). The opinion of the court of appeals on rehearing (Pet. App. 7-8) is unreported. The opinion of the district court (Pet. App. 1-3) is unreported. The initial opinion of the district court dismissing petitioner's action with leave to amend is reported at 701 F. Supp. 738.[1]

[1] The appendix to the petition does not include the district court's initial opinion. We have accordingly included it as an appendix to this brief.

## JURISDICTION

The judgment of the court of appeals was entered on October 3, 1990. The order of the court of appeals granting in part and denying in part a petition for rehearing was entered on January 9, 1991. Pet. App. 7-8. The petition for a writ of certiorari was filed on April 9, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

1. Petitioner is an attorney and a California resident, maintaining a law office within the jurisdiction of the United States District Court for the Central District of California. She is a member of the Indiana bar, and is admitted to practice before the United States District Courts for the Northern and Southern Districts of Indiana. Petitioner is also admitted to practice before the United States District Court for the Northern District of California. Pet. App. 5; App., *infra*, 2a.

In July 1987, petitioner applied for admission to the Bar of the Central District of California. The United States Magistrate denied petitioner's application on the ground that she was not licensed to practice law in California, as required by Local Rule 2.2.1 of the United States District Court for the Central District of California. App., *infra*, 2a. Rule 2.2.1 provides that

> [a]dmission to and continuing membership in the Bar of this Court is limited to persons of good moral character who are active members in good standing of the State Bar of California.

C.D. Cal Local R. 2.2.1.[2]

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[2] The Local Rules of the United States District Courts for the Southern and Eastern Districts of California also require

2. In November 1987, petitioner filed a federal court action against the federal respondents, namely, the United States District Court for the Central District of California and the judges of that court.[3] Petitioner challenged the constitutionality of Local Rule 2.2.1, which limits bar membership to active members of the California state bar. Petitioner alleged that the local rule violates the Privileges and Immunities Clause, the Commerce Clause, the "Equal Protection Clauses of the Fifth and Fourteenth Amendments," and the Due Process Clause. App., *infra*, 2a.[4]

In September 1988, the district court dismissed each of petitioner's claims, with leave to amend her complaint. The court rejected the claim that the local rule violates the Privileges and Immunities Clause, because that rule "is a matter of federal law legitimately administered by a federal entity." App., *infra*, 4a. Petitioner's claim, the court held, "is thus

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membership in the California state bar as a prerequisite to admission to practice. S.D. Cal. Local R. 110-3(a)(1); E.D. Cal. Local R. 180(a). By contrast, Local Rule 110-1 of the United States District Court for the Northern District of California does not require membership in the California state bar for admission to practice before that court.

[3] Respondent Judge A. Wallace Tashima is separately represented by private counsel.

[4] As petitioner is a private attorney, this case does not involve the effect of the statutory authority of the Attorney General to direct attorneys under the supervision of the Department of of Justice to appear before federal courts. See 28 U.S.C. 509, 515-519, 533. For that reason, petitioner's references to federal government attorneys (Pet. 14-15) are beside the point.

deficient as a matter of law, as State discrimination is, by definition, not possible." *Ibid.*[5] The court similarly dismissed petitioner's Commerce Clause challenge, since the local rule "is clearly based on federal law," *id.* at 6a and petitioner conceded that "the Federal Government cannot violate the Commerce Clause," *id.* at 5a.

Turning to petitioner's challenge based on the equal protection component of the Fifth Amendment, the court determined that "the proper standard of review is the rational basis test." App., *infra*, 8a. Applying that standard, the court held that respondents "have made a sufficient showing of a legitimate government interest which bears a reasonable and nonarbitrary relation to the challenged rule." *Id.* at 9a. The court recognized, for example, that "membership in the State Bar of California is a reasonable method of ensuring that certain ethical standards are met and maintained," and that the requirement "ensures that attorneys practicing in the Central District are knowledgeable in California substantive law." *Ibid.*

Finally, the court rejected petitioner's claim under the Due Process Clause. The court pointed out that petitioner "does not cite any rule, statute, or understanding that would support her claim of denial of a property right to practice law in the district court." App., *infra*, 11a. Moreover, the court concluded that

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[5] For that reason as well, the court rejected petitioner's claim based on the Equal Protection Clause of the Fourteenth Amendment. As the court recognized, "[b]ecause [petitioner] challenges a federal district court's rule, no state action is implicated, and any reliance on the Fourteenth Amendment is misplaced." App., *infra*, 6a.

> [n]othing in Local Rule 2.2.1 implicates [petitioner's] good name, reputation, honor or integrity, or imposes any stigma or other disadvantage limiting [petitioner's] employment opportunities, as would be required to support a finding of deprivation of liberty under the Due Process Clause.

*Ibid.*

3. Petitioner thereafter filed an amended complaint, alleging that Local Rule 2.2.1 violated the Due Process Clause, the Rules of Practice and Procedure of this Court, 28 U.S.C. 2071,[6] and the Federal Rules of Civil Procedure. Pet. App. 2.

In May 1989, after a hearing, the district court dismissed petitioner's claim. Pet. App. 1-3. The court held that Local Rule 2.2.1

> does not violate any constitutional right of [petitioner], and is not inconsistent with the rules of the United States Supreme Court regarding admission of attorneys, nor is the rule otherwise violative of 28 U.S.C. § 2071 or any Federal Rule of Civil Procedure.

Pet. App. 2.

4. The court of appeals affirmed. Pet. App. 4-6. It concluded that the "issues raised by [petitioner] have been decisively resolved by this court in *Giannini* v. *Real*, [911 F.2d 354 (9th Cir.), cert. denied, 111 S. Ct. 580 (1990)]." Pet. App. 4-5. In that case, the Ninth Circuit held (911 F.2d at 359-361) that Local Rule 2.2.1 does not violate the Due Process

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[6] That statute grants rule-making power to this Court and "all courts established by Act of Congress." 28 U.S.C. 2071(a).

Clause, this Court's Rules of Practice and Procedure, or the "principles of the right and justice standard set forth in *Frazier* v. *Heebe*, 482 U.S. 641 (1987)." Pet. App. 5.

5. In January 1991, the court of appeals granted petitioner's request for rehearing limited to considering her claim that the court's summary disposition denied her right to oral argument in violation of 9th Cir. R. 34-4. Pet. App. 7. Treating the petition for hearing as a "statement of reasons why oral argument should be heard," *ibid.*, the court rejected petitioner's contention that oral argument was needed to show that the court in *Giannini* failed to consider *Zambrano* v. *City of Tustin*, 885 F.2d 1473 (9th Cir. 1989). The court concluded, contrary to petitioner's submission, that "*Zambrano* does not require the invalidation of any rule that the district court could do without." Pet. App. 8.

## ARGUMENT

Before this Court, petitioner renews her constitutional challenge to Local Rule 2.2.1, which limits bar membership to active members of the California state bar. Earlier this Term, however, the Court denied certiorari in a case raising an almost identical attack on that Local Rule. *Giannini* v. *Real*, 111 S. Ct. 580 (1990). Nothing has occurred since this Court denied certiorari in that case that would make review of this case appropriate.

1. Petitioner contends (Pet. 10-15) that Local Rule 2.2.1 violates the Due Process Clause, because the requirement of membership in the California state bar is arbitrary and irrational. That contention is without merit. For the reasons articulated by the district court, and endorsed by the court of appeals,

see App., *infra*, 11a; Pet. App. 5, Local Rule 2.2.1 plainly bears a rational relationship to an attorney's fitness to practice before the federal respondents. See *In re Roberts*, 682 F.2d 105, 108 (3d Cir. 1987).

Petitioner seeks to avoid this straightforward application of settled law by suggesting that the Due Process Clause imposes a more stringent standard of review. That suggestion is wide of the mark. As this Court has made plain, "the Constitution does not require that because a lawyer has been admitted to the bar of one State, he or she must be allowed to practice in another." *Leis* v. *Flynt*, 439 U.S. 438, 443 (1979). And federal courts have rejected the proposition that there is a fundamental right—under the Due Process Clause—to practice law. *E.g.*, *Lupert* v. *California State Bar*, 761 F.2d 1325, 1327-1328 (9th Cir.), cert. denied, 474 U.S. 916 (1985). Accordingly, the district court correctly held that "the proper standard of review is the rational basis test." App., *infra*, 8a; accord *Giannini* v. *Real*, 911 F.2d at 360; *In re Roberts*, 682 F.2d at 108 (3d Cir. 1982).[7]

Petitioner's reliance (Pet. 11-12) on this Court's decisions invalidating residency requirements for admission to state or district court bars is mistaken. See *Barnard* v. *Thorstenn*, 489 U.S. 546 (1989);

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[7] For that reason, petitioner errs in contending that the local rule survives scrutiny under the Due Process Clause only if it is "absolutely necessary to the normal, routine and effective functioning of a United States District Court." Pet. 16; see *id.* at 16-21. Contrary to petitioner's suggestion (Pet. 9, 16), the court of appeals in *Zambrano* v. *City of Tustin*, 885 F.2d 1473 (9th Cir. 1989), had no occasion to consider the standard for reviewing the substantive validity of a local court rule. See *id.* at 1483 n.10. That case involved the standard for imposition of sanctions for an attorney's violation of a local court rule. See *id.* at 1480.

*Supreme Court* v. *Friedman*, 487 U.S. 59 (1988); *Frazier* v. *Heebe*, 482 U.S. 641 (1987); *Supreme Court* v. *Piper*, 470 U.S. 274 (1985). First, each of those cases involved a residency requirement that discriminated against out-of-state residents. This Court held that such requirements were invalid under either the Privileges and Immunities Clause or the Court's supervisory power over federal courts. Here, there is no such discrimination because the petitioner is a California resident; indeed, there is no residency requirement for membership in the bar of the Central District of California.

Second, in each of those cases, the non-resident attorney who challenged the residency requirement had passed the state's bar examination or was otherwise eligible for admission to the bar. *Barnard* v. *Thorstenn*, 489 U.S. at 549-550; *Supreme Court* v. *Friedman*, 487 U.S. at 61-62; *Frazier* v. *Heebe*, 482 U.S. at 643, 646; *Supreme Court* v. *Piper*, 470 U.S. at 276. As an alternative to residency requirements, this Court relied on state bar examination and membership requirements as means to ensure satisfaction of the courts' legitimate interests in the regulation of the practice of law. *Barnard* v. *Thorstenn*, 489 U.S. at 555-556; *Supreme Court* v. *Friedman*, 487 U.S. at 68; *Frazier* v. *Heebe*, 482 U.S. at 647-648; *Supreme Court* v. *Piper*, 470 U.S. at 285, 287. Here, petitioner has not sought admission to practice law in the State of California (Pet. 6), and has not been admitted to the California state bar. App., *infra*, 2a.

2. Petitioner also contends (Pet. 22-24) that Local Rule 2.2.1 must be invalidated as inconsistent with Rule 5.1 of the Rules of this Court, which provides that "[i]t shall be a requisite for admission to the Bar of this Court that the applicant shall have

been admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or of the District of Columbia." Sup. Ct. R. 5.1. That contention is frivolous, since Rule 5.1 governs admission to practice only before this Court. That rule, by its terms, does not prescribe requirements to practice before United States District Courts. See *Giannini* v. *Real*, 911 F.2d at 360; *In re Roberts*, 682 F.2d at 108-109.[8]

## CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1991

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[8] Accordingly, there is no sound reason for the Court to accept petitioner's invitation (Pet. 22-24) to invalidate Local Rule 2.2.1 under its supervisory powers. See *Frazier* v. *Heebe*, 482 U.S. at 645.

**APPENDIX**

UNITED STATES DISTRICT COURT
C.D. CALIFORNIA

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MARGARET DANEHY MAYNARD, PLAINTIFF

*v.*

THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, ET AL., DEFENDANTS

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Sept. 23, 1988

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MEMORANDUM DECISION GRANTING DEFENDANTS' MOTION TO DISMISS

BREWSTER, District Judge.

## I. BACKGROUND

Plaintiff, Margaret Danehy Maynard, filed this suit against defendants, the United States District Court for the Central District of California ("Central District") and all of the Central District judges. Plaintiff has asserted numerous constitutional challenges to the enforceability of Local Rule 2.2.1 of the Central District ("Local Rule 2.2.1"). Local Rule 2.2.1 provides, in relevant part, that admission to the Bar of the Central District is "limited to persons of good moral character who are active members in good standing of the State Bar of California."

Plaintiff is an attorney licensed in the State of Indiana and admitted to practice before the United States District Courts for the Northern and Southern Districts of Indiana. Plaintiff is a resident of California and maintains a law office within the jurisdiction of the Central District. Plaintiff seeks admission to the Bar of the Central District despite the fact that she is not a member of the State Bar of California.

On July 20, 1987, the Honorable George H. King, Magistrate of the Central District, denied the plaintiff's application for admission to the Bar of the Central District, based on the fact that she is not licensed to practice law in the State of California as mandated by Local Rule 2.2.1. Plaintiff seeks a declaratory judgment that Local Rule 2.2.1 is violative of the United States Constitution, and that she be admitted forthwith to general practice before the Central District.

Specifically, plaintiff avers that the requirement that she be licensed to practice law in the State of California as a condition to her admission before the Central District violates her rights under Article I, Section 8, Clause 3, and Article IV, Section 2, Clause 1 of the United States Constitution. In addition, plaintiff asserts that denial of her application for admission to the Bar of the Central District violates the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments.

On August 1, 1988, the court heard defendants' Motion to Dismiss this action under Fed.R.Civ.P. 12(b)(6).

## II. ANALYSIS

### A. *Failure to Exhaust Administrative Remedies*

Defendants argue that the court should stay or dismiss this action pending exhaustion by plaintiff of her administrative remedies. The defendants contend that such a result would prevent the court from unnecessarily reaching constitutional issues and would provide the Rules Committee of the Central District with an opportunity to amend Local Rule 2.2.1.

The court deems Maynard's correspondence with Chief Judge Manuel Real and Judge Harry Hupp, Chairman of the Rules Committee, to be an exhaustion of her administrative remedies. Maynard wrote to these judges requesting that Local Rule 2.2.1 be amended to permit resident attorneys licensed out-of-state to join the Bar of the Central District. The Rules Committee failed to take any action in response to Maynard's letters. The court treats this as a denial of her request. Plaintiff's next recourse was the filing of an action in federal court. Thus, plaintiff exhausted her administrative remedies.

### B. *Privileges and Immunities Clause of Article IV*

Maynard avers that denial of her petition for admission to the bar of the Central District constitutes an abridgement of her rights under Article IV, Section 2, Clause 1 of the United States Constitution. Specifically, Maynard alleges that Local Rule 2.2.1 unlawfully precludes her from practicing law, which she asserts is a "federally protected [sic] privilege and immunity. . . ." (Complaint IX).

Article IV, Section 2 of the Constitution provides that the "[c]itizens of each State shall be entitled to all Privileges and Immunities of Citizens in the sev-

eral States." The Privileges and Immunities Clause prevents "a state from discriminating against citizens of other states in favor of its own." *Hague v. C.I.O.*, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939). Thus, the Privileges and Immunities Clause has been construed as a limitation on powers of the states and not on powers of the Federal Government. *Hawes v. Club Ecuestre El Comandante, Etc.*, 535 F.2d 140, 145 (1st Cir. 1976).

The standards imposed by federal courts for admission of attorneys are matters of federal law. *In re Snyder*, 472 U.S. 634, 645 n. 6, 105 S.Ct. 2874, 2881 n. 6, 86 L.Ed.2d 504 (1985); *Matter of Roberts*, 682 F.2d 105, 107 n. 21 (3rd Cir. 1982). District Courts possess inherent authority to govern the admission of attorneys who seek to practice before them. *See e.g., Frazier v. Heebe*, 482 U.S. 641, 107 S.Ct. 2607, 2611, 96 L.Ed.2d 557 (1987); *In re Snyder*, 472 U.S. at 645 n. 6, 105 S.Ct. at n. 6.

In addition to this inherent power, federal courts are vested with express statutory authority to promulgate rules governing the admission of attorneys. 28 U.S.C. §§ 1654, 2071. 28 U.S.C. § 2071 provides in relevant part: "The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business."

Maynard cannot state a claim for violation of the Privileges and Immunities Clause, as Local Rule 2.2.1 is a matter of federal law legitimately administered by a federal entity. Plaintiff's Privileges and Immunities Clause claim is thus deficient as a matter of law, as State discrimination is, by definition, not possible.

Plaintiff cites a number of cases in which courts have struck down attorney admission requirements under the Privileges and Immunities Clause, to sub-

stantiate her argument that the Local Rules must similarly fall. *See Supreme Court of the State of New Hampshire v. Piper*, 470 U.S. 274, 105 S.Ct. 1272, 84 L.Ed.2d 205 (1985). However, in each of these cases, the courts were dealing with *state* laws which discriminated against *non-residents*. In the case at bar there is no state action. Furthermore, the Local Rule at issue does not discriminate on the basis of residency. Therefore, Maynard's challenge based upon the Privileges and Immunities Clause fails to state a claim upon which relief can be granted.

C. *Commerce Clause*

Maynard asserts that Local Rule 2.2.1 violates her rights under the Commerce Clause of the United States Constitution in that it unlawfully prevents her from practicing "federal law" before the Central District "which does touch and concern" interstate commerce. (Complaint VIII). Whether or not plaintiff states a claim for violation of the Commerce Clause ultimately turns upon whether Local Rule 2.2.1 is derived from state or federal law.

Maynard concedes that the Federal Government cannot violate the Commerce Clause. *In re Snyder*, 472 U.S. 634, 645 n. 5, 105 S.Ct. 2874, 2881, n. 5, 86 L.Ed.2d 504 (1985); Maynard's Points and Authorities in Opposition to Motion to Dismiss at p. 22. The Commerce Clause merely restricts actions by the states which unduly burden interstate commerce or otherwise encroach upon legitimate federal authority. *White v. Massachusetts Council of Construction Employers*, 460 U.S. 204, 213, 103 S.Ct. 1042, 1047, 75 L.Ed.2d 1 (1983). Courts construing the Commerce Clause cannot invalidate federal legislation, even when it burdens interstate commerce. *Morgan v.*

*Commonwealth of Virginia*, 328 U.S. 373, 380, 66 S.Ct. 1050, 1054, 90 L.Ed. 1317 (1946); *Intake Water Co. v. Yellowstone River Compact Commission*, 769 F.2d 568, 569-70 (9th Cir.1985), *cert. denied*, 476 U.S. 1163, 106 S.Ct. 2288, 90 L.Ed.2d 729 (1986). Because Rule 2.2.1 is clearly based on federal law, Maynard's Commerce Clause challenge fails to state a claim upon which relief can be granted.

D. *Equal Protection Clause*

Maynard alleges that Local Rule 2.2.1 denies her constitutional rights under the Fifth and Fourteenth Amendments, "in that the District Court is using a discriminatory classification of the State of California to exclude attorneys licensed in other states, without sufficient federal justification for relying on such state classification." (Complaint XI).

To the extent Maynard's discrimination allegations are predicated upon the Fourteenth Amendment, her constitutional challenge fails to state a claim upon which relief can be granted. The Fourteenth Amendment provides, in relevant part, that "[n]o state shall . . . deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. The Fourteenth Amendment, by its express terms, limits the actions of states rather than the actions of federal government. *See e.g.*, *Adams v. Howerton*, 673 F.2d 1036, 1041 n. 3 (9th Cir.), *cert. denied*, 458 U.S. 1111, 102 S.Ct. 3494, 73 L.Ed.2d 1373 (1982). Because plaintiff challenges a federal district court's rule, no state action is implicated, and any reliance on the Fourteenth Amendment is misplaced. *Matter of Roberts*, 682 F.2d at 105.

To the extent Maynard's discrimination allegations are predicated upon the Fifth Amendment, her constitutional challenge still fails to state a claim upon which relief can be granted. The Fifth Amendment does not contain an equal protection clause textually identical to that contained in the Fourteenth Amendment. However, it is generally acknowledged that the Due Process Clause of the Fifth Amendment embodies an equal protection "component" similar to that contained in the Fourteenth Amendment. *See, e.g., Hampton v. Mow Sun Wong*, 426 U.S. 88, 100, 96 S.Ct. 1895, 1904, 48 L.Ed.2d 495 (1976).

In evaluating any discrimination claim, the court must initially determine the appropriate level of scrutiny applicable to the challenged rule or government conduct. When a law disadvantages a suspect class or impinges upon a "fundamental right," the court will examine the law by applying a strict scrutiny standard. In the absence of such circumstances, the conduct or rule must be analyzed under a rational basis test. *Matter of Roberts*, 682 F.2d 105, 108 n. 3; *Lupert v. California State Bar*, 761 F.2d 1325, 1327 (9th Cir.), *cert. denied*, 474 U.S. 916, 106 S.Ct. 241, 88 L.Ed.2d 251 (1985).

Maynard has shown neither infringement of a fundamental right nor discrimination against a suspect class which would trigger strict scrutiny. Maynard argues that the Supreme Court in *Piper* held that the right to practice law is a "fundamental right." However, *Piper* is distinguishable because it involved only the Privileges and Immunities Clause, not the Equal Protection Clause. *See Lupert*, 761 F.2d at 1327 n. 2.

Furthermore, there is no legal support for Maynard's contention that federal practitioners should

be deemed a "suspect class" for equal protection purposes. Likewise, there is no legal support for the contention that the discrimination at issue should be tested under the "heightened scrutiny" analysis applied to issues of gender and illegitimacy discrimination claims. Cases striking down bar admissions requirements under the Equal Protection Clause have found that the state's bar admission standards make *explicit* use of a suspect classification. *See, e.g., In re Griffiths*, 413 U.S. 717, 93 S.Ct. 2851, 37 L.Ed.2d 910 (1973). Certainly, it is difficult to see how the discrimination at issue in this case bears any of the earmarks of a "suspect class." One's status as a resident attorney licensed in another state does not have any of the immutable characteristics of alienage, nationality, or race. Nor can one see a situation where there has been widespread discrimination against a discrete and insular minority.

In this case, therefore, the proper standard of review is the rational basis test. In general, the court has been especially deferential to legislative classifications in cases of challenges to the state regulation of licensed professions. *See, e.g., Watson v. Maryland*, 218 U.S. 173, 30 S.Ct. 644, 54 L.Ed. 987 (1910); *Ohralik v. State Bar Assn.*, 436 U.S. 447, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978); *In re Griffiths*, 413 U.S. 717, 722-23, 93 S.Ct. 2851, 2855.

In applying the rational basis test, the court has also stressed the heavy procedural burden placed upon the plaintiff in proving her case. The plaintiff in a challenge to a legislative classification, reviewed under the rational basis standard, must prove that the facts on which the legislature may have relied in shaping the classification "could not reasonably be conceived to be true by the governmental decision-

maker." *Brandwein v. California Bd. of Osteopathic Ex'rs*, 708 F.2d 1466, 1471 (9th Cir.1983) (citing *Vance v. Bradley*, 440 U.S. 93, 111, 99 S.Ct. 939, 950, 59 L.Ed.2d 171). In reviewing the rationality of the classification, a court may hypothesize legislative purposes: "where there are plausible reasons for Congress' action, our inquiry is at an end. It is, of course, 'constitutionally irrelevant whether this reasoning in fact underlay the legislative decision.'" *Flemming v. Nestor*, 363 U.S. 603, 612, 80 S.Ct. 1367, 1373, 4 L.Ed.2d 1435 (1960).

Maynard contends that there is no rational relationship between membership in the State Bar of California and fitness to practice federal law in the district court. However, defendants provide a myriad of legitimate public policy objectives for the Bar exam requirement. First, defendants suggest that the Bar exam is a reasonable gauge for determining an applicant's fitness to practice law. Second, membership in the State Bar of California is a reasonable method of ensuring that certain ethical standards are met and maintained. Third, the Bar exam requirement ensures that attorneys practicing in the Central District are knowledgeable in California substantive law. Fourth, tying District Court admission to State Bar membership protects the public by ensuring that attorneys will make choice of forum decisions solely with their clients' best interest in mind.

Under the rational basis test, defendants have made a sufficient showing of a legitimate government interest which bears a reasonable and nonarbitrary relation to the challenged rule. *C.F. Matter of Roberts*, 682 F.2d 105 (3rd Cir.1982). The Supreme Court requires nothing more than this showing. Although Maynard suggests that other district court

rules are *more* reasonably related to the Central District's articulated interests, the court need not make such a determination when applying a rational basis test. Perhaps the issue of admission to the district courts should be uniform across the United States, as plaintiff suggests. However, the appropriate forum to address such uniform admissions standards must be either Congress, the United States Supreme Court, or the District Court themselves through the United States Judicial Conference.

E. *Due Process Clause*

Maynard's final challenge to Local Rule 2.2.1 is that the Local Rule denies her substantive due process in that it prevents "substancially [sic] or equally well qualified attorneys from other states from becoming full members of the bar in defendant District Court, merely because they do not have a license to practice law in the State of California." (Complaint X).

Initially, the court must dismiss under Rule 12 (b)(6) any claim plaintiff makes under the Due Process Clause of the Fourteenth Amendment. As indicated above, the decision whether to admit an attorney to practice before a federal district court is a matter of federal law. *Matter of Roberts*, 682 F.2d at 107 n. 2. Since the Fourteenth Amendment only implicates state action, the plaintiff's reliance on the Fourteenth Amendment is misplaced.

Under the Fifth Amendment's Due Process Clause, plaintiff must first establish the property or liberty interests she asserts are subject to the protection afforded by the Due Process Clause. *Board of Regents v. Roth*, 408 U.S. 564, 569-70, 92 S.Ct. 2701, 2705, 33 L.Ed.2d 548 (1972).

The Due Process Clause affords protection to those property interests which are created and defined by independent sources, such as statutes, legal rules, or mutually explicit understandings. *Id.* at 577, 92 S.Ct. at 2709. Maynard does not cite any rule, statute, or understanding that would support her claim of denial of a property right to practice law in the district court. Furthermore, courts have held that the right to practice law is not a property right protected by the Due Process Clause. *See Matter of Roberts*, 682 F.2d at 107; *Cf. Leis v. Flynt*, 439 U.S. 438, 443, 99 S.Ct. 698, 701, 58 L.Ed.2d 717 (1978).

Nothing in Local Rule 2.2.1 implicates plaintiff's good name, reputation, honor, or integrity, or imposes any stigma or other disadvantage limiting plaintiff's employment opportunities, as would be required to support a finding of deprivation of liberty under the Due Process Clause. *See Roth*, 408 U.S. at 573-74, 92 S.Ct. at 2707.

Thus, the court should dismiss Maynard's cause of action for violation of the Due Process Clauses of the Fifth and Fourteenth Amendments for failure to state a claim upon which relief can be granted.

F. *Conclusion*

For the above-mentioned reasons, defendants' Motion to Dismiss is hereby granted with leave to amend. Plaintiff shall have thirty days leave to amend her complaint.

IT IS SO ORDERED.

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